

## **REMARKS/ARGUMENTS**

### **1. Summary of the Office Action**

Affirmation of provisional election of claims 1-20 and 59-61 is requested.

The disclosure is objected to due to informalities.

Claims 1-17 and 59-61 are rejected under 35 U.S.C 103(a) as being unpatentable over Itakura et al. (U.S. Patent No. 5,901,149) in view of Rusu et al. (U.S. Patent No. 6,141,323).

Claims 18-20 are rejected under 35 U.S.C 103(a) as being unpatentable over Itakura et al. (U.S. Patent No. 5,901,149) in view of Rusu et al. (U.S. Patent No. 6,141,323) as applied to claim 15 and further in view of Applicant's admitted prior art.

### **2. Response to the Restriction Requirement**

Applicants elect to prosecute claims 1-20 and 59-61.

### **3. Response to the Objection to disclosure**

Applicants amended the specification to overcome the objection. It is respectfully requested that the objection is withdrawn.

### **4. Response to § 103 Rejections**

#### **a. The combination of Rusu and Itakura is improper**

Itakura is directed at a decode system and method in which a system clock is generated on the basis of a time stamp contained in transmission data to be transmitted. (Itakura, Abstract.)

Rusu is directed at a queue length measurement device that is comprised of a number of queues that are capable of holding data cells. (Rusu, Abstract.)

In rejecting independent claims 1, 17, and 59, Examiner admitted that Itakura does not expressly disclose that the controller sets the monitoring rate (of the level of time restricted data in a buffer) but rather Rusu teaches this aspect.

Then, Examiner merely stated that “it would have been obvious to one of ordinary skill in the art at the time of the invention to have the controller set the monitoring rate in order to allow the controller to adjust the monitoring rate as appropriate”.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants submit that Examiner failed to establish a *prima facie* case of obviousness, and especially failed to provide a suggestion or motivation to combine these references. Furthermore, features disclosed by Applicants as prior art do not include each and every limitation of any of the claims 1-61. Therefore, claims 1-61 are patentable over the combination of Itakura and Rusu in view of Applicant disclosed prior art and should be allowed.

**b. Rusu teaches away from such a combination**

Examiner asserted that Rusu teaches, in a system for adjusting queue length, obtaining queue increase/decrease information at a programmable time interval

(col. 8, lines 49-52; col. 8, lines 3-6; and col. 9, lines 1-4) in order to allow a system to compensate and adapt to different rates...”

However Rusu states that a solution that includes the programmable time interval is suited to assigned bit rate (ABR) and Unassigned bit rate (UBR) and not to time sensitive data that is usually transmitted at a variable bit rate: ”The advantage of the proposed method and apparatus is that the queue increase/decrease information (the measurement value) is obtained at fixed (or programmable or known) time intervals, and is propagated .. across the switch by various elements...correlated with PED (early packet discard), PPD (partial packet discharge), techniques for ABR (Assigned Bit Rate) and UBR (Unassigned Bit Rate) type of traffic.” (Rusu, Column 8, lines 49-64).

Because Rusu teaches away from the Rusu-Itakura combination, such combination is improper. Thus, Applicants respectfully request that the rejection of claims 1-61 is withdrawn.

**c. The combination of Rusu and Itakura does not disclose various parameters that affect the monitoring rate**

Each of claims 5,6,7, and 9 include a limitation that relates to the monitoring rate of the level of time restricted data in a buffer.

In rejecting claim 5 the examiner claimed that the combination of Rusu and Itakura discloses that the monitoring rate is responsive to a difference between the buffer behavior pattern to a predefined behavior pattern.

In rejecting claim 6 the examiner claimed that the combination of Rusu and Itakura discloses that the monitoring rate is responsive to a low frequency changes in the level of time restricted data in the buffer.

In rejecting claim 7 the examiner claimed that the combination of Rusu and Itakura discloses that the monitoring rate is changed such as to compensate for jitter.

In rejecting claim 9 the examiner claimed that the combination of Rusu and Itakura discloses that the monitoring rate is responsive to the level of jitter included in the time restricted data.

In rejecting each of these claims the examiner referred to columns 7 and 8 of Rusu and to column 4 of Itakura.

Applicants submit that the mentioned above references do not describe neither of the parameters to which the monitoring rate is responsive. Rusu mentions that the time interval between buffer level checks the system can, in order to adapt to cell flow and statistics, shorten the time interval to gain more samples to permit quicker external adjustment thereto.

Rusu does not disclose to alter a monitoring rate in response to jitter, to compensate for jitter, to a difference between buffer behavior pattern and an expected pattern or to low frequency changes. Therefore, claims 5, 6, 7, and 9 are patentable and should be allowed even if the combination of Rusu and Itakura was proper.

## 5. Conclusion

Having tendered the above remarks and amended the claims as indicated herein, Applicants respectfully submit that all rejections have been addressed and that the claims are now in a condition for allowance, which is earnestly solicited.

If there are any additional fees due in connection with this communication, please charge our deposit account no. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact Elena Dreszer at (408) 947-8200 ext. 209.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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Elena B. Dreszer

Reg. No. 55,128

12400 Wilshire Blvd.  
Seventh Floor  
Los Angeles, CA 90025-1026  
(408) 947-8200